"As indicated above, none of the later cases discuss the broad proposition regarding the general purpose of recent legislation, nor do they consider the effect of recent customs and methods of dealing. The independence of married women, not only as to the conduct of their business, but as to their freedom of action and independence of husband's control, is left out of consideration. The Legislature of 1915 (Session Acts of 1915, page 269), possibly with a view of settling the doubts which seem to have harassed the judicial mind, enacted a statute which would relieve the husband from liability for injuries committed by a married woman, except in cases where he would be jointly responsible if the marriage did not exist. This, of course, simplifies the matter as to all cases arising in the future. The present case, however, arose before the enactment. We cannot presume from the enactment of the statute that the law was required to be changed, because statutes are often passed which simply declare a rule of law already existing. We are of the opinion that, according to the spirit, purpose, and general scope of recent legislation, in addition to specific statutory provisions, as well as the freedom of conduct accorded to married women of later years, all indicating a complete absence of the reason which supported the old rule relating to a husband's common-law liability for his wife's torts, the rule should no longer be recognized as in existence."

Electricity—Injury to Child by Defective Insulation—Trespasser—Contributory Negligence.—The liability of an electrical company for injuries to a child coming in contact with its wires is laid down in Williams *v.* Springfield, etc., Co. (Mo.), 202 S. W. 1, affirming the lower appellate court (187 S. W. 556). It was shown that the wires of the company passed through a tree near the dividing line of a public alley and a building lot; the tree was 30 or more feet high and its limbs quite low, such as children could, and did climb easily; the insulation of the wires in and near the tree had been in a bad condition for a year or more; about two months prior to the injury the owner of the lot began the erection of a bungalow, in and around which he permitted children to play without interference on his part; the erection of the bungalow was quite near the tree and its limbs extended over the roof; the bungalow being near completion on the day of the injury the children were playing on the roof and the owner told them to come down; the child injured undertook to do so by way of the tree; a limb broke just as he reached the trunk of the tree and four or five feet above the wires and he fell coming in contact with the wires and was severely injured. In applying the law the court said:

"The Court of Appeals gave recognition to the general principle that a company like appellant, if reasonably chargeable with knowl-

edge, or of facts making it reasonably probable, that persons may lawfully come into close proximity to its wires for purposes either of business or pleasure, is obligated 'to use every precaution which was accessible to insulate its wires at' such places and to use the utmost care to keep them so. Geismann *v.* Electric Co., 173 Mo. loc. cit. 674, 73 S. W. 654; Von Trebra *v.* Gaslight Co., 209 Mo. loc. cit. 659, 108 S. W. 559; Clark *v.* R. R., 234 Mo. loc. cit. 418, 419, 137 S. W. 583; Campbell *v.* United Rys., 243 Mo. loc. cit. 152, 147 S. W. 788.

"The Court of Appeals also recognized the rule that a company stretching electric wires in a city, through trees like the evidence tends to show the tree in this case to have been, must take notice of boyish impulses and anticipate the presence of children in such trees. In this connection it quoted from a case (Temple *v.* Elec. Co., 89 Miss. 1, 42 South. 874, 11 L. R. A. (N. S.) 449, 119 Am. St. Rep. 693, 10 Ann. Cas. 924) in which the Supreme Court of Mississippi said:

" 'Whether this appellee knew that this particular small boy was in the habit of climbing this tree or not, it is clear from the averments of the declaration that it did know the tree, the kind of tree, and, knowing that, knew what any person of practical common sense would know, that it was just the kind of tree that children might climb into and play in the branches.'

"The Court of Appeals cited cases and texts supporting the principle. It is well established. Mullen *v.* Gas & Elec. Co, 229 Pa. loc. cit. 57, 58, 77 Atl. 1108; Benton *v.* Public-Service Corporation, 165 N. C. 357, 81 S. E. 448; Thompson *v.* Slater (App.), 193 S. W. loc. cit. 973, 974; Sweeten *v.* Power & Light Co., 88 Wash. 679, 153 Pac. 1054; Electric Light Co. *v.* Healy, 65 Kan. 798, 70 Pac. 884; Meyer, Adm'x *v.* Light & Traction Co., 151 Wis. 279, 138 N. W. 1008; Talkington *v.* Power Co., 96 Wash. 386, 165 Pac. 87; Birmingham, etc., Co *v.* Cockrum, 179 Ala. 372, 60 South. 304; Hayes *v.* Powder Co., 95 S. C. 230, 78 S. E. 956; O'Gara *v.* Electric Co., 244 Pa. loc. cit. 159, 160, 90 Atl. 529; Curtis on Law of Electricity, § 512; Joyce on Electric Law, § 445. The Temple Case often has been cited approvingly in yet other decisions, and, so far as we can discover, has been criticized in none. The principle is sound.

"Having reached these conclusions, the Court of Appeals further held the principle of the Temple Case inapplicable. It held there was no reasonable probability of an occurrence like that detailed in the evidence, and therefore there is no liability, concluding thus:

" 'Applying these principles to this case, we cannot hold that defendant should have anticipated that a boy or any one, would climb to the apex of the roof, and attempt to go from thence to the top of the tree, and in so doing fall on these wires.'

"After a careful examination of the record, we are convinced the

Court of Appeals fell into error as to the facts. * * * The decisions cited by the Court of Appeals as warranting the holding last mentioned are, in general, those proceeding upon the principle that an electric company which has placed its wires where they are practically inaccessible, or where they can be reached only by overcoming considerable difficulty or danger, i. e., in places where the presence of persons is not reasonably to be anticipated, are not, ordinarily, liable for injuries resulting from contact with them. Card *v.* Electric Co., 77 Wash. loc. cit. 569, 137 Pac. 1047; Braun *v.* Electric Co., 200 N. Y. loc. cit. 494, 495, 94 N. E. 206, 35 L. R. A. (N. S.) 1089, 140 Am. St. Rep. 645, 21 Ann. Cas. 370. Several decisions cited in the opinion are from courts which have approved and applied the rule in the Temple Case, and others distinguish it. None of them criticizes it. The facts of the record render these cases inapplicable, and bring the case within the principle of the Temple Case. That principle, so far as this case is concerned, is that electric companies which stretch wires through trees which children can climb must anticipate the presence of children in such trees and govern themselves accordingly. Everybody knows boys will climb trees. It is the probability of their presence there which brings trees within the general rule of Geismann *v.* Elec. Co., supra. The rule is not that only such boys are protected as may climb from the ground into a tree. The thing required to be anticipated is the presence of children in the tree. The method by which they get into it cannot ordinarily be very important. Respondent was not injured by reason of coming into the tree from the house. He did not fall from the house. He had climbed into the tree and was engaged in descending the tree when he came into contact with the wires. Can it be that the company would be liable if the boy had been climbing up and had touched the wires and is not liable because he came in contact with them while attempting to descend? The Court of Appeals does not say so. Neither do we. The boy had reached a place where he had a right to be and where appellant reasonably might have anticipated his presence. His method of reaching the place may have been unusual, but that method did not bring about his injury. The trial court was right in its conclusion on this phase of the case."

On the question of the child being a trespasser, "The Court of Appeals correctly held respondent was not to be treated as a trespasser. This is true whether the tree was in the alley or on private property. It was not appellant's property. This is the rule in Missouri, as shown by cases cited by the Court of Appeals, and is the rule elsewhere. Daltry *v.* Elec. Co., 208 Pa. loc. cit. 412, 57 Atl. 833; Thompson *v.* Power Co., 77 N. H. 92, 88 Atl. 216; Nelson, Adm'r *v.* L. & W. Co., 75 Conn. loc. cit. 551, 54 Atl. 303; Birmingham, etc., Co. *v.* Cockrum, 179 Ala. 372, 60 South. 304; Commonwealth Elec. Co. *v.* Melville, 210 Ill. loc. cit. 77, 70 N. E. 1052."

As to the child being guilty of contributory negligence as a matter of law, "Of course, his presence in the tree was not such negligence. Nor does the fact that he slipped or fell upon the wires bar the action. In Thompson *v.* Slater (App.), 193 S. W. loc. cit. 974, 975, the St. Louis Court of Appeals decided an analogous question. A limb on which a boy was sitting broke and he fell against uninsulated wires passing through the tree. The court held the noninsulation and not the fall was the proximate cause of the injury. In Lydon *v.* Edison Co., 209 Mass. 529, 95 N. E. 936, decedent, while destroying moths in a tree, was killed by contact with defendant's uninsulated wires. The court held that had there been proof decedent 'accidentally slipped or lost his balance, and instinctively or naturally threw up his hand and happened in that way to touch the wire, that would not be inconsistent with due care on his part.' The lack of such evidence resulted in a judgment for the company, the rule as to the burden of proving due care being not like ours. The court cited Garant *v.* Cashman, 183 Mass. loc. cit. 18, 66 N. E. 599. In that case a laborer standing on a bench in performing his work lost his balance and fell against an insufficient guard or barrier, which gave way. The court said no negligent act appeared, and held the facts justified a finding of due care. In Union Pacific Ry. *v.* McDonald, 152 U. S. loc. cit. 281, 14 Sup. Ct. 626, 38 L. Ed. 434, a boy in running beside a slack heap slipped and fell into it. The Supreme Court of the United States held that 'his falling into the slack heap was accidental and in no proper or just sense the result of negligence.' In Birsch *v.* Electric Co., 36 Mont. loc. cit. 579, 93 Pac. 940, a workman engaged in building a wall near wires improperly insulated stepped upon a mortar board and slipped. He threw out his arms involuntarily and struck the wires. The court held the slipping accidental, the contact with the wires involuntary, and the fact no bar to plaintiff's case. In Wade *v.* Electric Co., 98 Kan. 370, 158 Pac. 28, appellant company insisted the judgment should be reversed because the evidence failed to show that decedent slipped and fell upon the wires, as alleged in the petition. In Humphreys *v.* Coal & Coke Co., 73 W. Va. 495, 80 S. E. 803, L. R. A. 1916C, 1270, a coal mine track layer slipped, and, in falling, caught a live wire stretched nearby. The court held there was "no evidence of contributory negligence." In Colusa Parrot M. & M. Co. *v.* Monahan, 162 Fed. 276, 89 C. C. A. 256, a laborer upon a wet roof slipped, and in falling grasped a live wire. The Circuit Court of Appeals held this did not bar plaintiff. In the case of Elliott *v.* Light Co., 204 Pa. 568, 54 Atl. 278, a ladder on which a painter was at work slipped. The painter, endeavoring to save himself, grasped a nearby wire. He was shocked by the wire, and, it seems, injured by the fall. The court held the proximate cause of the injury was the fall; that defendant was not responsible for the fall of the ladder; that it would be spec-

ulation to attempt to 'differentiate between the extent of the injury he did receive and that which he would probably have received if he had not come in contact with the electric wire in the course of his fall. It is quite possible the wire helped break the fall, and thus lessen the extent of the injury,' but that, in any event, the presence of the wire did not bring about the accident. Whatever view is taken of the correctness of this decision (Birsch *v.* Elec. Co., 36 Mont. loc. cit. 582, 93 Pac. 940), the facts distinguish it. In no event does it unsettle the principle of the cases previously cited. In the circumstances it cannot be said this nine year old boy is barred of redress by the facts shown by this record. The boy's presence in the tree did not constitute contributory negligence. There was no direct evidence he knew of the defect of insulation. There was no evidence he purposely touched the wires. The uncontradicted evidence shows he did not."

Workmen's Compensation Act—Assault by Employee as Injury "Arising Out of" Employment.—In Jacquemin *v.* Turner & Seymour Mfg. Co., in the Supreme Court of Errors of Connecticut (March, 1918, 103 Atl. 115), it appeared that a company manufacturing iron castings, not desiring too many casters around the cupola where the molten metal was drawn out, or that the casters should get through their work too early before leaving for the day, supplied them with a limited number of ladles, and in the course of their employment two of the casters quarreled over the possession of a ladle, which each wanted to use in order to pour his moulds and get away. The one who began the quarrel and fight resulting in the death of the other asserted a right to a ladle which he did not have, and when the decedent had full opportunity to have desisted from the fight he chose to renew it, and thereafter was injured. It did not appear that the conditions under which the business was conducted had ever before occasioned similar trouble. It was held that the injury did not arise out of decedent's employment. The opinion concludes:

"The finding does not disclose that the conditions under which this business was conducted had ever before occasioned a similar trouble, or that either of the men was quarrelsome. There was nothing to put the employer on notice. It was the duty of the employees to do their work under the established conditions. O'Shaugnessy asserted a right over Jacquemin's ladle which he did not have. He began the quarrel and fight. These were purely personal. They had no relation to the special conditions of the business so far as the finding shows. And when Jacquemin had full opportunity to have desisted from the fight he chose to renew it, and thereafter received his injury. The fight occurred in the course of the employment, but it did not originate in it or arise as a consequence or incident of it. These men turned temporarily from their work to engage in their